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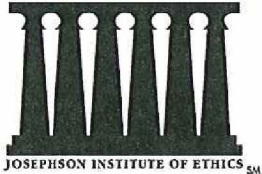
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Water Docket, EPA
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Washington, D.C., 20460

November 8, 2010

Dear Madam or Sir,

Frederick County Government supports the goals to protect and restore the Chesapeake Bay and has contributed significant and sustained efforts voluntarily to this end. The County has concerns about the mechanisms proposed by the Environmental Protection Agency in the Draft Chesapeake Bay Total Maximum Daily Load and in the concomitant Maryland Department of the Environment Draft Phase I Watershed Implementation Plan. The County provides the following comments on the Executive Summary of the TMDL:

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“When EPA establishes or approves a TMDL that allocates pollutant loads to both point and nonpoint sources, it determines whether there is a “reasonable assurance” that the nonpoint source load allocations will be achieved and water quality standards will be attained. Reasonable assurance for the Chesapeake Bay TMDL is provided by the numerous federal, state and local regulatory and non-regulatory programs identified in the accountability framework that EPA believes will result in the necessary point and nonpoint source controls and pollutant reduction programs.”

- MDE is not in a position to guarantee reasonable assurance that it can meet the goals of the TMDL as it has passed through most stormwater and wastewater requirements to municipalities that have not yet had chance to comment. Frederick County believes that based on the extensiveness of requirements passed on to municipalities through the Maryland WIP makes Frederick County believe that municipalities will not be able to provide this assurance.

“Beginning in 2012, jurisdictions (including the federal government) are expected to develop two-year milestones to track progress toward reaching the TMDL’s goals.”

- Based on the available funding and organizational framework both inside the County and outside, these milestones seem impossibly aggressive.

“If a jurisdiction’s plans are inadequate or its progress is insufficient, EPA can invoke a suite of backstop actions to ensure pollution reductions. These include expanding coverage of NPDES permits to sources that are currently unregulated, increasing oversight of state-issued NPDES permits, requiring additional pollution reductions from point sources such as wastewater treatment plants, increasing federal enforcement and compliance in the watershed, prohibiting new or expanded pollution discharges, redirecting EPA grants,

and revising water quality standards to better protect local and downstream waters.”

- None of these actions addresses inadequate resources on the part of local governments. EPA has a plan to punish local governments for not meeting TMDL requirements without assurance that meeting such requirements is even possible. This potentially puts Frederick County in a terrible position where it would be subject to enforcement and legal actions even with the best of efforts.

“In their draft Phase I WIPs, the jurisdictions were expected to subdivide the Bay TMDL allocations among pollutant sources; evaluate their current legal, regulatory, programmatic and financial tools available to implement the allocations; identify and rectify potential shortfalls in attaining the allocations; describe mechanisms to track and report implementation activities; provide alternative approaches; and outline a schedule for implementation.”

- MDE did not consult with those required to implement the WIPs during its construction; Frederick County is not able to guarantee at this time that we can meet the WIP, in fact, the opposite is expected due to resource constraints.

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The EPA evaluation also concluded that none of the seven WIPs provided sufficient reasonable assurance that pollution controls identified could actually be implemented to achieve the nitrogen, phosphorus and sediment reduction targets by 2017 or 2025. The shortfalls of the WIPs, which varied by jurisdiction, included:

1. Vague or no strategy for filling recognized program or resources gaps
 2. Few enforceable or otherwise binding commitments
 3. Discrepancies between implementation levels in model input decks and strategies described in WIP
 4. Reliance on pollution trading programs but no commitment to adopt critical trading drivers such as new regulations
 5. Few dates for key actions and program-building milestones
- Frederick County agrees with EPA because we also do not believe that the actions are implementable, due to lack of coordination with regulated entities that face severe resource constraints. We are also concerned about the over-reliance on the state’s agricultural trading program to provide offsets for all new development when the program is in its infancy, is currently only set up for trades between Ag and WWTPs, and has extremely low enrollment from farms.

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“Once EPA evaluated a WIP and found shortfalls in pollution loading reductions and/or assurance that reductions would be achieved, EPA included only the parts of the WIP that it determined to be adequate and appropriate in its TMDL allocation. EPA then determined how to make up that shortfall and/or insufficient amount of reasonable assurance for the remainder of the allocation. EPA considered varying levels of federal backstop allocations that adjusted loads delivered to the Bay to ensure water quality standards are met. The result is a draft TMDL that merges jurisdictions’ WIP allocations with varying degrees of federal backstop allocations in all seven jurisdictions, as well identification of additional federal actions that EPA is prepared to take if jurisdictions do not achieve milestones on schedule.”

- If this is the case, then all of our comments about the WIP also apply to the draft TMDL, seeing as how it is a hybrid with the WIP. We are attaching our comments about the WIP in regards to this section.

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“The jurisdictions are encouraged to revise and strengthen their draft Phase I WIPs before final versions are due November 29 to meet the basin-state pollution allocations and provide reasonable assurance the allocations will be achieved.”

- This allows the municipalities no time to comment on changes made to the MD WIP after the public comment period ends on November 8 and before it is submitted to EPA with MDE’s changes November 29. This would seem to violate rules for public review.

Frederick County also echoes the concerns of the Maryland Association of Counties on the following points:

- *Need for Bay Model Refinement*
- *Federal Funding Needed for County Governments*
- *Technical Assistance Needed for County Governments*

- *Extension of Phase II Watershed Implementation Plan (WIP) Deadlines*

We appreciate the opportunity to address our concerns with the Draft Chesapeake Bay TMDL and express our commitment to the restoration of the Chesapeake Bay and its tributaries.

Regards,

A handwritten signature in black ink, appearing to be 'SM' followed by a stylized flourish.

Shannon Moore
Section Head, Frederick County Watershed Management Section
Division of Public Works